

BRYAN CAVE

EX PARTE OPINION AND ORDER

ORIGINAL

January 9, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20024

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re Time Warner Cable Notice of Ex Parte Presentation
Digital Must Carry, CS Docket No. 98-120

Dear Ms. Dortch:

Time Warner Cable ("TWC"), by its attorneys, is hereby responding to a letter filed by KVMD Licensee Co. LLC ("KVMD") on December 5, 2003 (the "KVMD Letter"), in response to the above-referenced Notice of Ex Parte Presentation submitted by TWC on November 19, 2003.

In an ex parte notification filed November 19, 2003, TWC reported that

"[s]ince TWC's June 30, 2003 response to the FCC's request for information on the company's implementation of the "Powell Plan," TWC has made continued and steady progress in completing new deals with digital broadcast stations. As our report to the FCC reflects, as of June 30th, our systems had commenced carriage, pursuant to negotiated agreements, of over 120 digital broadcast stations. During the four and a half months following that report, we have successfully negotiated new digital retransmission consent agreements with over 25 additional broadcast stations."

In the face of TWC's impressive record, KVMD ignores these facts when it calls into question TWC's commitment to promoting the conversion to digital television. Instead, KVMD complains that TWC's commitment is "inadequate" because it refuses to carry KVMD's digital signal. TWC's record with respect to the carriage of digital broadcast signals is in fact a strong one, and KVMD's assertion is simply without merit.

KVMD-DT's lack of carriage on the TWC systems is directly related to the fact that as a local broadcaster, KVMD-DT does not actually serve TWC's cable communities - a failure specifically recognized by the Commission. By a Memorandum Opinion and Order released on October 20, 2003,^{1/} the Commission's Media Bureau, based on a petition filed by TWC, removed from the market of Station KVMD-DT, Twentynine Palms, California, certain communities in Los Angeles County and Orange County served by TWC. The Media Bureau's modification of KVMD-DT's market for purposes of the must carry rules fully considered the "value of localism" as required by the statutory market modification criteria set forth in Section 614(h)(1)(c)(ii) of the Communications

DA 03-3279 (CSR 6181-A).

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Act. Among the evidentiary factors relied upon by the Media Bureau in granting TWC's petition were (i) KVMD-DT's remoteness from the cable communities, (ii) KVMD-DT's failure to provide an interference-free digital signal to any of the communities, (iii) the absence of any KVMD-DT carriage history or local viewership, and (iv) the lack of KVMD-DT programming having a specific nexus to the cable communities.

TWC was certainly not the only cable operator in the Los Angeles DMA to petition the Commission for exclusion of its communities from KVMD-DT's market. Indeed, in a series of Orders released in November, 2003, the Media Bureau modified KVMD-DT's market of the request of (1) Frontier, A Citizens Communications Company,^{2/} (2) Avenue TV Cable Service, Inc.,^{3/} (3) Altrio Communications,^{4/} (4) Lone Pine Television, Inc.,^{5/} and (5) Mediacom California LLC.^{6/} In each instance, as with TWC, the Media Bureau based its holdings on the cable operators' claims that excluding their respective communities from KVMD-DT's market would effectuate the purposes of Section 614(h) of the Communications Act.

KVMD has petitioned the Media Bureau for reconsideration of its action granting the KVMD-DT market modification sought by TWC. When the KVMD Letter is viewed in this context, it is clear that KVMD is attempting an end run around the strict limitations in Section 1.106 of the Rules on pleadings filed in reconsideration proceedings. The KVMD Letter is nothing more than an ill-disguised ad hominem attack on TWC and a rehash of KVMD's allegations made to the Media Bureau in its recent petition for reconsideration of the KVMD-DT market modification decision. TWC will refrain from using this setting to refute these allegations (TWC has opposed KVMD's petition for reconsideration), but we do urge the Commission to consider the KVMD Letter with KVMD's obvious intent in mind.

TWC's decision to seek modification of KVMD-DT's market was based on the many factors recognized by the Media Bureau that warrant KVMD-DT's loss of carriage rights on TWC's systems in the Los Angeles market. These factors are unique to KVMD-DT and TWC's operations in the Los Angeles market.

Should there be any questions concerning this letter, please communicate with the undersigned.

Very truly yours,



John R. Wilner
Counsel for Time Warner Cable

JRW/vjh

^{2/} DA 03-3610 (CSR-6233-A)
^{3/} DA 03-3611 (CSR-6216-A)
^{4/} DA 03-3612 (CSR-6229-A)
^{5/} DA 03-3643 (CSR-6238-A)
^{6/} DA 03-3652 (CSR-6222-A)

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